

Shylan vs State of Kerala

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Court : Kerala Orders

Decided On : Feb-24-2021

Judge : Honourable the Chief Justice Mr.S.Manikumar,Honourable Mr. Justice Shaji P.Chaly

Appeal No. : WP(C)/20945/2014

Appellant : Shylan

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR & THE HONOURABLE MR. JUSTICE SHAJI P.CHALY WEDNESDAY, THE 24TH DAY OF FEBRUARY 2021 / 5TH PHALGUNA, 1942 WP(C).No.20945 OF 2014(S) PETITIONERS: 1 SHYLAN, S/O.SADANANDAN,RESIDING AT THENGUVACHVILA, NEAR HELIPAD, KURAKKANNI, VARKALA, TRIVANDRUM.

2 SAJEEV, AGED 49 YEARS, S/O.SASI, RESIDING AT ADITYA BEACH RESORT, NEAR HELIPAD, KURAKKANI, VARKALA, TRIVANDRUM. 3 NISHI, AGED 34 YEARS, S/O.PRASANNAN,

RESIDING AT UDATHI BEACH RESORT, NEAR HELIPAD, KURAKKANI, VARKALA, TRIVANDRUM. 4 AJITH, AGED 34 YEARS, S/O.VIDHYASAGARAN, RESIDING AT SEA ROCK RESTAURANT, NEAR HELIPAD, KURAKKANNI, VARKALA, TRIVANDRUM. 5 CHADRABABU, AGED 48 YEARS, S/O.ACHUTHAN, RESIDING AT MALAPURATH VEED, NEAR HELIPAD, KURAKKANNI,VARKALA, TRIVANDRUM. 6 MOHANAN, AGED 59 YEARS, S/O.SAHADEVAN, RESIDING AT MOHAN'S INN BEACH RESORT, NEAR HELIPAD, KURAKKANNI, VARKALA, TRIVANDRUM. BY ADVS. SRI.NAGARAJ NARAYANAN SRI.BENOJ C AUGUSTIN SHRI.PRATHAP PILLAI SRI.SAIJO HASSAN SRI.VISHNU BHUVANENDRAN RESPONDENTS: 1 STATE OF KERALA, REPRESENTED BY PRINCIPAL SECRETARY, DEPARTMENT OF TOURISM, GOVERNMENT OF KERALA, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM 695 001 2 DIRECTOR, DEPARTMENT OF TOURISM,GOVRNMENT OF KERALA, PARK VIEW,THIRUVANANTHAPURAM 695 033. 3 PRINCIPAL SECRETARY, DEPARTMENT OF HEALTH AND FAMILY WELFARE, GOVERNMENT OF KERALA, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM 695 001. 4 DISTRICT COLLECTOR, COLLECTORATE, KUDAPPANAKKUNNU, THIRUVANANTHAPURAM 695 005.

5 VISIO VARKALA INFRASTRUCTURE DEVELOPMENT CORPORATION LIMITED, GIRISH MAHAL, FIRST FLOOR,TC 15/1178(1) KRISHNAVILASOM ROAD, VAZHUTHACAUD, THIRUVANANTHAPURAM 695 004, REPRESENTED BY ITS SPECIAL OFFICER-CUM-DIRECTOR

6 VARKALA MUNICIPALITY, MUNICIPALITY OFFICE,VARKALA, THIRUVANANTHAPURAM 695 141, REPRESENTED BY ITS SECRETARY 7 SECRETARY, VARKALA MUNICIPALITY, MUNICIPALITY OFFICE, VARKALA P.O,THIRUVANANTHAPURAM DISTRICT 695 141 8 GEOLOGICAL SURVEY OF INDIA, KERALA STATE UNIT, MANIKANTESHWARAM P.O., NETTAYAM,

THIRUVANANTHAPURAM - 695 013, REPRESENTED BY ITS DIRECTOR. 9 STATE LEVEL ENVIRONMENT IMPACT ASSESSMENT AUTHORITY, DIRECTORATE OF ENVIRONMENT AND CLIMATE CHANGE, PALLIMUKKU,PETTAH,THIRUVANANTHAPURAM-695 024, REPRESENTED BY ITS SECRETARY. 10 COASTAL ZONE MANAGEMENT AUTHORITY, SASTRA BHAVAN,PATTOM,THIRUVANANTHAPURAM DISTRICT 695 004, REPRESENTED BY ITS SECRETARY. 11 INSPECTOR OF POLICE (CIRCLE INSPECTOR), VARKALA POLICE STATION, VARKALA, THIRUVANANTHAPURAM DISTRICT 695 141. 12 HABITAT TECHNOLOGY GROUP, POOJAPPURA, THIRUVANANTHAPURAM-695 012, REPRESENTED BY ITS SECRETARY. SRI. TEK CHAND R1 TO R4, AND R11, SRI.P.VIJAYAKUMAR, ASG FOR R8, SRI.K.R SUNIL FOR R10, SMT. BINDU SREEKUMAR FOR R12 THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24-02-2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 24th day of February, 2021 S.Manikumar, C.J. The petitioners are residing near Varkala Beach Cliff in Thiruvananthapuram District. Varkala Beach is a world renowned tourist destination and Varkala Beach Cliff is a rare geological land formation in the world, which has to be preserved for the future. Varkala Beach Cliff and its surrounding areas have been proposed to be declared as India's first National Geopark. The said area is ecologically, as well as geologically sensitive, fragile and the stability of the cliff is under serious danger and threatened with landslides. Taking into account these aspects, the District Collector, Thiruvananthapuram, 4th respondent, has issued Exhibit P7 order dated 29.7.2013, prohibiting forthwith, any kind of construction activities, with or without permission, even if conducted by the Government Institutions, within a distance of 100 metres from Varkala Cliff edge.

2. Respondents 1 to 3, 10 and 12 have designed a master plan for

constructing a tourism complex by name Tourism Plaza in the Helipad Area of Varkala Beach Cliff, which goes against the Government stand to conserve the said area in its natural form and to undertake any activity in the said area only under the control of the Geological Survey of India, Kerala State Unit, Thiruvananthapuram, 8th respondent. Any such project would cause tension to the soil and laterite underneath the said area and damage the natural and geological features of the cliff landscape. Further, the said project is undertaken, without the permission of the 6 th respondent Municipality, and without the sanction, guidance and directions of the 8th respondent. Hence, instant writ petition is filed seeking the following reliefs:

(i) declare that the Helipad area adjoining the Varkala Beach cliff, at its highest point and epicenter is an ecologically and geologically sensitive and fragile area and the same should be conserved in its natural, original and pristine form and preserved as a protected area.

(ii) issue a writ of mandamus or other appropriate writ, order or

direction, directing respondents 1 to 7, 11 and 12 not to undertake any construction or development activity or landscape changes in the helipad area within a distance of 100 metres from the Cliff edge of the Varkala Beach Cliff;

(iii) issue a writ of mandamus or other appropriate writ, order or

direction, directing respondents to ensure that no construction or development activity or landscape changes take place in the helipad area within a distance of 100 metres from the Cliff edge of the Varkala Beach Cliff;

(iv) issue a writ of mandamus or other appropriate writ, order or

direction, directing the 8th respondent to examine the proposed Tourism Plaza Project of respondents 2, 5 and 12 and direct the respondents 1 to 7 and 8 to 11 to ensure that any construction, development and other activity in the helipad area of the Varkala Cliff takes place only in accordance with the permission, sanction and the directions of the 8 th respondent.

(v) declare that any construction/work plan of respondents 1 to 5

and 12 by the 1st respondent touching on the helipad area near the Varkala Beach Cliff without prior permit and sanction of the 6th and 7th respondents, is illegal.

(vi) issue a writ of mandamus or other appropriate writ, order or

direction, directing respondents 4 to 7 and 10 to ensure that there is no violation of Coastal Zone Regulation notification in the helipad area of Varkala Beach Cliff and take action to prevent any construction or other activity in the said area in violation which is in violation of the Coastal Zone Regulation notification.

3. In support of the prayers, petitioners have, inter alia, raised the following grounds:

A. The action of the 12th respondent to effect construction work and landscape development in the helipad area of Varkala Beach Cliff with the assistance of the 11th respondent, without obtaining permission/permit from the 5th respondent Municipality, is illegal and liable to be interfered with. As per Sections 382 and 389 of the Kerala Municipality Act, 1994 and Rules 7, 11 and 18 of the rules framed thereunder, no construction of any structure should be made without the permit of the 5th respondent Municipality and presently the attempt to affect constructions by the 12th respondent without such permit is illegal and liable to be prevented. B. The helipad area is lying on the Varkala Beach Cliff and is

adjacent to the edge of Varkala Beach Cliff, and also the entire area is within 50 to 100 meters from the edge of the Cliff. The action of respondents 1 to 5 and 12, in effecting such constructions, is against the fundamental right of the petitioners guaranteed under Article 21 of the Constitution of India. C. The geological and ecological conservation of

the Varkala Beach Cliff requires that an area up to 100 metres distance from the cliff edge should be placed as a protected zone with no construction or development activities. For this, the helipad open space area adjoining the cliff should be preserved intact in its natural and pristine form and should not be tampered with. Any tampering or interference in the natural glory and landscape of the said helipad area, which adjoins the cliff at its epi-centre and highest point and which is the only open space adjoining the cliff, will affect the stability and ecological balance of the rare geological features of the cliff. D. The action of respondents 1 to 3, 5, 11 and 12 in attempting to allow substantial modification of the landscape and earth in the helipad area adjoining the edge of the cliff is ecologically disastrous and ecologically impermissible. E. In Exhibit P7, the 4th respondent District Collector has specifically directed the 5th and 6th respondents and the 11th respondent to ensure that no work should be carried out by anybody including Government agencies, within a distance of 100 metres of the Varkala Cliff edge and has directed that even fortification work should be done only under the control of the 8th respondent GSI and that the area should be a protected area. Further, the entire area up to 100 meters from the cliff edge has been noted by the District Administration vide Exhibit

P7 to be under the control of the 8th respondent GSI, for its protection. In such circumstances, any development work within 100 metres of the cliff edge can be done only with the concurrence, permission and control of the 8th respondent GSI. Even the Chief Minister of Kerala vide Exhibit P6 news report has taken the stand that the said area has to be declared as protected area. The Government's stand is that an area of 100 metres distance from the cliff edge should be a protected area where no construction or development work could be undertaken and now the Government agencies are estopped from retracting from the said stand. If the 3rd respondent turns around and takes a contrary stand, the same will be unreasonable and arbitrary and violative of Article 14 of the Constitution of India. So also, if the Government agencies have declared

their intention of protecting the said area as a no construction zone, turns around and takes a contrary stand, it would amount to arbitrary action. According to the petitioners, the Government agencies are not entitled to take a contradictory and self defeating stand in such matters, involving protection and conservation of ecology. F. The Helipad area will come in CRZ I as per Rule 7 of the Coastal Regulation Zone notification, 2011 since the said area is ecologically sensitive and has geomorphological features which play a role in maintaining the integrity of the coast and it is an area of archaeological and geological importance which is entitled to heritage status. The 10th respondent Coastal Zone Authority has also classified the said area in CRZ I. Since the Helipad area comes in CRZ I, no construction activities are permitted in the said area as per Rule 8 of the Coastal Regulation Zone Notification, 2011. Further, as per Exhibit P7

order, the 4th respondent District Collector has specifically directed the 5th respondent to ensure that no relaxation to CRZ should be allowed within the distance of 100 metres from the Varkala Cliff edge and strict adherence of CRZ shall be ensured in the said area. Presently, respondents 4, 5 and 10 are not taking any steps to prevent the violation of CRZ Regulations and such inaction is illegal. G. Exhibit P7 has specifically directed that any maintenance and fortification works in the area upto 100 metres from the Varkala Cliff edge should be done by the 7th respondent GSI and that the 8th respondent's assistance and guidance is required for any activity in the said area. In such circumstances, the respondents 1 to 3 and the other government agencies allowing construction and development activities in the helipad area in the Varkala Cliff edge without the permission of the 8th respondent GSI, is illegal. In any view of the matter, the 8th respondent ought to have been consulted and the sanction of the 8th respondent was essential before any such activities could be allowed.

4. Regional Joint Director, Department of Tourism, respondent No.2, has filed an additional counter affidavit dated 1.4.2015, relevant portions of the same read thus:

2. It is submitted that the proposed "Tourism Plaza" is intended for providing facilities for tourists to sit and to relax. Now the area is used as an illegal parking area. In the proposed project there is no hard structure being put in the place, but seating space, security lighting, toilets, planting trees and landscaping are provided. No natural, geological

change will effect due to the soft landscaping, but it will be a boost to the botanical features in the place.

3. It may be kindly noted that no excavation, or high

structures etc. are included in the project. The project comprises landscaping by planting shrubs, providing seating benches, walkways etc. for tourists. At present the space is used for illegal parking of the nearby hotels which may be benefiting the petitioners who are running hotels near to the area. This is a small area of nearly 2 acres of land. The petitioners are trying to mislead the Hon'ble Court by stating the specialities for Varkala Area which extends to tens of square kilometres and the whole being disturbed by the project. The project will only enhance the geological and specialities in the area even though it is being done in a small area.

4. No disturbance is made in the sedimentary formation

etc., in the area. The project envisaged will be done by making a soft landscaping only. No mechanical excavation or large scale construction are proposed in the site. As per the project we are making an eco-friendly and beautiful park at the area which is now being used as a parking area for vehicles by the nearby hotels, restaurants etc.

5. The statement made by the petitioner in para 8 of

Writ Petition is misleading. The petitioners are trying to create a notion that the entire area is being vandalized through the implementation of the project. As stated the project area comes to only nearly 2 acres of land, that too with planting shrubs, walkways, benches and toilet facilities etc: in a helipad and its adjacent area, which is already a tarred portion and now being utilized as an illegal parking area.

6. The proposed project is not having any mining or

quarrying activities. The proposed project envisages providing basic facilities to tourists without disturbing the ecology or geology of the location. Further the project intends for the development of ecology by planting and making this area more greenery. The development of Tourism Plaza, Varkala is having only soft construction activities. The intention is to provide some basic facilities to tourists. The lack of basic facilities like toilets, sitting places are creating hardships for tourists. There are a lot of complaints and suggestions from the part of Tourists in this regard. The project envisaged may abate such hardship being experienced to tourists.

7. Since the proposed Varkala Plaza does not make any

geological change, Government of Kerala, Department of Health and Family Welfare gave permissive sanction for the project at the site. The ownership of the land is claimed by the Department of Health and Family Welfare, Government of Kerala vide letter C1.8782/2012 dated 02.01.13 of the Director Indian System of Medicine Ext.R2(b). At present it was used by nearby restaurants, hotels and other institutions for their illegal parking area, which are to be discouraged considering the tourism and general interest of the public. The Helipad inside the area will not be disturbed by the implementation of the said project. Since the land

belongs to Health Department, the Department of Tourism had obtained permissive sanction for them for the implementation of the project vide Exhibit-R2-3.

8. There is no construction of roads in the project. One

walkway is to be made. The vacant spaces are intended for providing & planting small trees and other small vegetation in the planned manner. No heavy construction is proposed in

these areas. There is no hiding or suppression of facts in the drawing. The petitioners are trying to mislead the Hon'ble Court in the case. All statutory clearance which may be needed for the construction will be obtained before implementing the project. As such there are no high constructions etc, and the clearance will be made accordingly as required. With regard to the grounds mentioned in the Writ Petition:

9. It is submitted that all statutory clearance required

for the project will be obtained before implementing the project. No confusion is made in the plan. No high constructions are being planned in the area. Only soft landscaping etc: are to be made for the benefit of tourists visiting Varkala Cliff. Many complaints are being received on the lack of the facilities for sitting/toilet facilities in the area. By providing shrubs and walkways/benches etc: no ecological or geographical changes will take place. The project implementation will enhance the natural beauty of the region and will attract more tourists at Varkala.

10. The project will be implemented after obtaining the

statutory clearance from the sanctioning authority if needed. In this area there are no heavy constructions proposed. Hence, this will not affect the stability of the cliff area and geological features of the cliff. There is no artificial modification of the cliff or changing the natural environs

proposed in the project. Necessary clearance will be obtained if needed from agencies before starting the project. There is no intention to violate the CRZ regulations for the implementation of this project.

11. It is also submitted that on implementation of this project the area will become a place for enhancing natural

feelings. After the implementation of the project there are no restrictions for the present beneficiaries of the public space. The proposed landscaping works will not affect Varkala beach cliff. Any construction will be carried out in the area only after getting permission, sanction and the directions of the responsible authorities. There is no intention to violate the coastal zone regulation notification.

5. Ext-R2(a) Government order dated 25.01.2012 reads thus:

GOVERNMENT OF KERALA Abstract Department of Tourism - Working
Group on Plan Schemes - Development of Tourism Plaza at Varkala -
Administrative Sanction accorded - Orders issued.

----- TOURISM

(A) DEPARTMENT G.O(Rt)No.746/12/TSM Dated, Thiruvananthapuram,
25/01/2012

Read:- Note No. P4-14031(7)-11 dated 09/01/2012 from the Director, Department of Tourism, Thiruvananthapuram.

ORDER

Varkala Helipad is a place of historical importance. Varkala beach sits beneath its red cliffs, a strip of fine, golden sand licked gently by the warm waters of the Arabian Sea. The Helipad area under the possession of Municipality is presently used as a parking space. There is presently no activity at this spot. Considering the Importance of tourism in this destination, the Director, Department of Tourism as per the note read

above has submitted a proposal for the Development of Tourism Plaza at Varkala for converting the entire space into a tourism plaza

and sought for administrative sanction for the same at an estimated cost of Rs.1,35,69,950/- (Rupees One Crore thirty five lakhs sixty nine thousand nine hundred and fifty only) including consultancy and centage charges. The Director, Department of Tourism also indicated that the project will give a much needed face-lift for the Varkala Helipad and utilize the full potential of the site with facilities for tourists to relax with the following features by leaving the helipad area untouched. since no construction is allowed at site due to proximity to beach, tensile structures will be used to cover mobile food courts E toilets will be provided Seating spaces with sufficient lighting will be provided along the existing walkway for the tourists, facing the beach. Small hillocks with lawn are also provided along the walkway for aesthetics and seating purpose. Parking facilities on either side of the helipad is provided A small open air theatre with 200 pax is provided Overall lighting will be provided for the walkway and other facilities. Planting and maintaining the plants, grass, and plumbing for watering the landscape. The working Group that met on 16.01.2012 considered the proposal of the Director, Department of Tourism and approved it. Administrative Sanction is therefore accorded for the Development of Tourism Plaza at Varkala at an estimated cost of Rs.1,35,69,950/- (Rupees One Crore thirty five lakhs sixty nine thousand nine hundred and fifty only). The expenditure for the purpose will be met from the head of account "5452-01-800-76 Basic Infrastructure Development at Tourist Destination in the State (Plan)" in the current years

budget subject to the condition that all the relevant codal provisions and revised schedule of rates 2010 should be observed strictly. The work will be executed through the Habitat and will

be completed within a period of 12 months. The guidelines

issued by Finance Department vide G.O(P)408/2007/Fin dated By Order of the Governor C.P.Ajmal Additional Secretary to Government

6. Ext.R2(c), which is the translation of Ext.R2(b) letter dated 2.1.2013 sent by the Director, Indian System of Medicines to the Director, Tourism Department, is extracted hereunder:

C1.8782/02012 Directorate of Indian System of Medicines, Arogya Bhavan, P.B.No. 182, Thiruvananthapuram - 695 001. From The Director, Indian System of Medicines, Thiruvananthapuram. To The Director, Tourism Department, Thiruvananthapuram. Sir, Sub:- Construction Activities in the Helipad of Varkala Nature Care Hospital -reg. Ref: 1. Your Lr. No. P4. 14031(T) dated, 07.12.12.

2. G.O.(Rt) No. 746/12 dated, 25.01.12.

3. Lr. No. 2548/12 dated, 26.09.12 of the Village

Officer, Varkala. As per referred letter cited, you have conducted a meeting in the presence of Sri. Varkala Kahar, the Honourable MLA, to discuss the matter of construction activities of the Tourism Plaza in the Helipad Area. As per law, the Helipad area is under the possession of the Varkala Nature Care Hospital. The possession documents are there for the same. As per reference 2 nd cited it is wrongly stated that this area is under the possession of the Municipality. The District Collector has intervened and stopped the starting of construction activities in the area of the Department, without this department, knowledge and consent. The copies of documents received from the Village Officer regarding the ownership of this land is forwarded herewith. You are intimated that no construction activities to be done in this area without the permission of this department. You are also informed that the matter is to be decided on Government level, for which Government is intimated. Yours faithfully, Sd/- Director ISM Department

7. Ext.R2(e), which is the translation of Ext.R2(d) letter dated 26.9.2012 of the Village Officer, Varkala, is extracted hereunder: From The village Officer, Varkala.

To The Medical Officer in Charge, Government Nature Care Hospital, Varkala. Sir,

Sub:- Possession of land - regarding. On examination of the official records kept here, it is revealed that 05 Acre 31 cents of land in survey Nos. 514, 515 and 516 was transferred from the Public Works Department to the Ayurveda Department as per Order No. D3- 13748/77 Dated: 6.10.1978. The Nature Care Hospital, Varkala and the Helipad area, Varkala are situated in this land. I am submitting this fact, along with the copy of the puramboku register for information.

26.09.12, Sd/- Varkala Village Officer

8. Vision Varkala Infrastructure Development Corporation Limited, respondent No.5, has filed a statement dated 29.1.2015, relevant paragraphs of which read thus:

It is submitted that the Vision Varkala Infrastructure Development (VIVID) Corporation was registered on 25.02.2013 for the comprehensive Infrastructure Development of Varkala which includes nearly seven Grama Panchayats and Varkala Municipality. A Master Plan for the Development of Varkala area is being prepared. This respondent have no project as "Tourism Plaza" as said in the Writ Petition. It is understood that this project is being taken up by the Tourism Department of Government of Kerala.

2. It is also submitted that VIVID Corporation has a

project for the establishment of National Centre for Performing Arts (NCPA) at Varkala sanctioned by the Government of India at a cost of Rs.10 crores. The Tourism Department has sanctioned an area of 2 acres of land for the establishment of

the said centre in the Varkala Government Guest House compound which is 500 metres away from the cliff area. NCPA has a performance

Hall, Compound Wall, office, Kalarithara etc. The constructions of the same this respondent have to obtain clearance from Coastal Zone Management Authority. The implementation of the project will be only after getting the clearance from the Coastal Zone Regulatory Authority, Varkala Municipality and other concerned authorities. The Corporation is also looking for the preservation and protection of the cliff area and are continuously in touch with the Geological Survey of India for their valuable suggestions for the protection of the cliff area.

9. The Director, Geological Survey of India, Thiruvananthapuram, respondent No.8, has filed a counter affidavit dated 22.2.2017, relevant paragraphs of which are extracted hereunder:

7. The Committee, including Geological Survey of India, National Centre for Earth Science Studies (NCESS) and Department of Geology, University of Kerala constituted for suggesting measures to protect Varkala cliff, has submitted a joint report to Government of Kerala in November, 2013. The remedial measures suggested were mainly keeping in view the safety of life and property followed by protection of aesthetic beauty of the cliff and its geological significance and the development of the tourism industry. The recommendations include minimizing the coastal erosion by constructing suitable engineering structures and regulating surface run off etc. The Committee suggested that no new construction is to be allowed at least for a distance of 100 meters from the edge of the cliff.

The committee also recommended not to alter the cliff by doing the activities like construction of steps and pathways etc., and also suggested restriction of vehicular movement close to the cliff face.

8. The Ext.P7 order of the 4 th Respondent, i.e. District

Collector, on behalf of the Govt. of Kerala, is a matter of record and nothing beyond what is on record is admitted. The averments made in

para 12 of the Writ petition, pertains to the State Administration and Geological Survey of India have no comments on the issue. The District Magistrate and Collector, Thiruvananthapuram District, enforced orders under Section 144 of the Cr.P.C. in the cliff area, with a view to prevent any breach of peace and avert any imminent danger to human life. The

order prohibits any construction activities within the distance of

100 metres from Varkala cliff along the sea shore of Papanasam beach, Varkala Village in Varkala Taluk.

9. The averments relating to the alleged augmenting of

tourism potential and generating revenue from tourism, etc., are beyond the purview of the 8th respondent. Ext.P13 order dated 24-06-2014, issued by the 3rd Respondent, i.e. Principal Secretary, Department of Health and Family Welfare, Kerala, is a matter of record and involves Government of Kerala. The 8th respondent is not connected with the issue/action of the State Government.

10. The 8th respondent is not involved in the matters as

alleged by the petitioners at paragraph 14 of the Writ petition, regarding the wrong and incorrect depiction on the construction site. So also, the sanction granted by the State Government and the grant of permission by the 5th Respondent-Municipality for execution of the project for improving tourism, is a matter of record, which does not pertain to the 8th respondent.

11. It is submitted that the Geological Survey of India can

offer technical advice on request with regard to Geo- technical/geological assessments and behaviour of the cliff strata. As such, the Geological Survey of India has recommended preservation of the Varkala Cliff in view of its unique geological significance.

10. The Member Secretary, Kerala Coastal Zone Management Authority, Thiruvananthapuram, respondent No.10, has filed a counter affidavit dated 2.7.2015, the relevant paragraphs of which are as hereunder:

2. The Central Government, had issued the Coastal Regulation Zone (CRZ) Notification- 1991 & 2011 with a view to ensure livelihood security to the fisher communities and other local communities, living in the coastal areas, to conserve and protect coastal stretches, its unique environment and its marine area and to promote the development through sustainable manner based on environment and its marine area based on scientific principles taking in to account of the natural hazards in the coastal areas, sea level rise due to global warming.

3. The CRZ notifications classifies various Coastal

Regulation Zones (CRZ), permissible and prohibited activities in the CRZ areas as well as the procedure for obtaining clearance for various activities in these areas including construction of buildings. Every activity in CRZ areas requires prior approval from the Kerala Coastal Zone Management Authority (KCZMA) or Ministry of Environment and Forest,

Govt. of India as the case may be.

4. As per the CRZ notification, every activity in the area

classified as Coastal Regulation Zone requires prior approval from this respondent. The activities including construction of buildings in the CRZ area without prior approval of this respondent is irregular. The area in question comes under CRZ and hence prior approval from this respondent is mandatory under CRZ Notification-2011 for taking up any activity.

11. We have considered the rival submissions addressed at the

Bar. Deliberation of facts makes it clear that the subject issue raised by the petitioners is on the basis of a construction activity that was intended adjacent to the Varkala Beach, Thiruvananthapuram. According to the petitioners, the site where the construction is proposed, is an area wherein, the notifications issued by the Coastal Zone Management Authority are to be taken into consideration, and no constructions can be carried out, without securing permission from Varkala Municipality, respondent No.6.

12. The case put forth by the petitioners is that the District

Collector, Thiruvananthapuram, respondent No.4, as per Exhibit-P7 order

dated 29.07.2013 has prohibited construction activities in Varkala Cliff Edge and the attempt of the respondents to carry out constructions is in absolute violation of the prohibitory order issued by the 4 th respondent. It is an admitted fact that the Helipad area, adjoining the Varkala Beach Cliff is an ecologically, as well as geologically sensitive and fragile area at present, remaining without any construction.

13. It is the case of the State Government that at present, illegal

parking is made by the people visiting the nearby hotels in the Helipad area, and the State Government, with the intention of promoting tourism, thought of putting up landscaping by planting shrubs, providing benches, walkways, etc. It is also further submitted by the learned Senior Government Pleader that the State Government is not intending to carry out any permanent constructions and the idea envisaged by the Tourism Department was that of putting up makeshift temporary structures, in

order to facilitate the interest of tourists. It is also submitted that to

maintain cleanliness in the area, and to avoid inconveniences to the general public and tourists, e-toilets are to be provided. Therefore, according to the State

Government, these are activities in which material and permanent constructions are not involved and the facilities proposed to be developed by the Tourism Department are permitted under the Kerala Municipalities Act, 1994, as well as the rules framed thereunder.

14. The stand adopted by the State Government in their counter affidavit is not refuted by the petitioners. In fact, the State Government have raised a contention that petitioners have filed this writ petition, in

order to help the business establishments near the Helipad area and if

any facilities are provided, car parking area of such establishments in the Helipad area would be lost, and therefore, the writ petition lacks bona fides. Anyhow, we are not deciding the said question, since the counter affidavit filed by the Department of Tourism, explicitly states that they are not intending to put up any permanent structures and have no intention to overlook the municipal laws.

15. It is an admitted fact that the area in question comes under

the Coastal Zone Management Authority and as per the notification issued by the said authority, no constructions can be put up in the Helipad area adjacent to the Varkala Beach Cliff. If any activity is to be carried out, as is contended by the Coastal Zone Management Authority, permission has to be obtained from the authority concerned. If at all any permission is needed from the Coastal Zone Management Authority, it is for the Tourism Department to seek permission, in order to put up the facilities in the area in question.

16. Record of proceedings makes it clear that the subject matter

was pending before this Court from the year 2014, without any interim orders, in the light of the submission made by learned Government Pleader on 13.10.2014 that no construction work was going on at that time, as alleged by the petitioners in the writ petition. The statement made by the Tourism Department that it has no intention to make any permanent construction is also recorded. In view of the passage of time and the statement of the Tourism Department that they are not

intending to carry out any permanent construction in the area in question, we are not inclined to grant any reliefs, as sought for by the petitioners. Accordingly, this writ petition is dismissed. However, we make it clear that if and when the Tourism Department intends to put up any constructions or facilities of whatsoever nature for the tourists, as is recorded above, and if any permission for that purpose is required from the Coastal Zone Management Authority and Varkala Municipality, respondent Nos.10 and 6, Tourism Department shall take steps to secure permission, in accordance with the law, and proceed with the activities proposed. Pending interlocutory applications, if any, shall stand closed. Sd/- S. MANIKUMAR CHIEF JUSTICE Sd/- SHAJI P. CHALY JUDGE vpv APPENDIX PETITIONER'S EXHIBITS: EXHIBIT P1 TRUE COPY OF REPORT PUBLISHED IN THE HINDU NEWS PAPER DAILY DATED 07-07-2014 EXHIBIT P2 TRUE COPY OF EXHIBIT P1 REPORT PUBLISHED IN THE WEBSITE OF KERALA STATE COUNCIL FOR SCIENCE TECHNOLOGY EXHIBIT P3 TRUE COPY OF EXHIBIT P1 PUBLISHED IN THE WEBSITE OF THIRUVANANTHAPURAM UPDATES EXHIBIT P4 TRUE COPY OF THE PHOTOGRAPHS OF THE HELOPAD AREA OF VARKAL CLIFF EXHIBIT P5 TRUE COPY OF THE RESEARCH ARTICLE

"GEODIVERSITY GEOGRAPHICAL HERITAGE AND GEOPARKS IN INDIA OF SRI R.B SINGH AND SRI SUBHASH ANAND PUBLISHED IN THE INTERNATIONALB JOURNAL OF GEOHERITAGE IN

EXHIBIT P6 TRUE COPY OF THE NEWS REPORT OF THE CHIEF MINISTER'S DECLARATION OF PROTECTED ZONE PUBLISHED IN THE HINDU BUSINESS LINE DATED 06-07-2012 EXHIBIT P7 TRUE COPY OF THE ORDER DATED 29-07-2013 ISSUED BY THE 4TH RESPONDENT DISTRICT COLELCTOR EXHIBIT P8 TRUE COPY OF THE ORDER DATED 07-01-2014 ISSUED BY THE 4TH RESPONDENT DISTRICT COLECTOR EXHIBIT P9 TRUE COPY OF THE ENGLISH TRANSLATION OF EXHIBIT P8 EXHIBIT P10 TRUE COPY OF THE GOVERNMENT ORDER DATED 06-03-2013 EXHIBIT P11 TRUE COPY OF THE GOVERNMENT ORDER DATED 07-03-2013 EXHIBIT P12 TRUE COPY OF THE GOVERNMENT ORDER DATED 23-07-2013 EXHIBIT P13 TRUE COPY OF THE ORDER DATED 24-06-2014 ISSUED BY THE 3RD RESPONDENT EXHIBIT P14 TRUE COPY OF THE ENGLISH TRANSLATION OF EXHIBIT P13 EXHIBIT P15

TRUE COPY OF THE DETAILED WORK PLAN PREPARED BY THE 12TH
RESPONDENT FOR DEVELOPMENT OF TOURISM PLAZA EXHIBIT P16 TRUE
COPY OF THE LETTER SENT BY THE 12TH RESPONDENT DATED 31-07-
2014 TO THE CHAIRMAN OF THE 5TH RESPONDENT COMPANY EXHIBIT
P17 TRUE COPY LETTER DATED 19-07-2014 ISSUED BY THE 2ND
RESPONDENT RESPONDENTS' EXHIBITS: EXT.R2(A) TRUE COPY OF HTE
GO (RT)NO.746/12/TSM DATED 25.01.2012. EXT.R2(B) TRUE COPY OF THE
LR.NO.C1-8782/12 DATED 2.1.2013. EXT.R2(C) TRUE COPY OF THE ENGLISH
TRANSLATION OF EXT.R2(B) EXT.R2(D) TRUE COPY OF THE LETTER
DATED 26.9.2012 OF VILLAGE OFFICER, VARKALA ADDRESSED TO
CHARGE MEDICAL OFFICER, NATURE CURE HOSPITAL VARKALA.
EXT.R2(E) TRUE COPY OF THE ENGLISH TRANSLATION OF EXT.R2(D)
/TRUE COPY/ P.A. TO JUDGE

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